

### REMARKS

Claims 85-86 have been withdrawn. Claims 1-84 are currently examined in this application.

Claims 1-7, 9 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,534,711 to Ovshinsky et al. ("Ovshinsky") in view of U.S. Patent No. 4,818,357 to Case et al. ("Case"). The rejection is respectfully traversed.

Claim 1 recites: "maintaining [the] silver selenide target at a temperature of less than about 350° C during [the] sputtering process to form a silver selenide film which comprises both alpha silver selenide and beta silver selenide." As explained in the specification at ¶0048:

Silver selenide (e.g. Ag<sub>2</sub>Se) is well known for its low temperature phase transition point of 406 K (about 130° C.). At temperatures below 406 K, Ag<sub>2</sub>Se forms an orthorhombic structure, known as the "beta phase." At temperatures above 406 K (about 133° C.), Ag<sub>2</sub>Se undergoes a structural change in which the Se forms a body-centered cubic sublattice, while the Ag undergoes a melting transition. In this so-called "alpha phase" or "superionic phase," the Ag ions exhibit liquid-like diffusion.

Ovshinsky is cited for teaching the formation of a memory device including a memory material. Ovshinsky notes that the memory material can be sputtered in a process where the substrate is at a temperature ranging from ambient temperature to 300° C. Ovshinsky at Table 2. Ovshinsky discloses that the memory material can be any number of materials, preferably including at least one chalcogen element and may include at least one transition metal element. Ovshinsky at col. 14, line 60 to col. 15, line 2. Ovshinsky does not state a target temperature nor that silver selenide is a suitable memory material, much less that silver selenide is formed in both the alpha and beta phases.

The Office Action relies on Case for teaching a sputtering process that maintains a certain target temperature. Office Action at page 4. Case, however, relates to a method for sputter

deposition to form homojunctions, particularly photovoltaically active semiconductor homojunctions. Case at col. 2, lines 52-68. Case is not concerned with forming memory devices as Ovshinsky is and like Ovshinsky is silent about forming silver selenide in both the alpha and beta phases.

The Office Action states that one skilled in the art would be motivated to select the single process parameter of Case (the target being kept at 50 degrees Centigrade) to modify Ovshinsky's process for the purpose of preventing evaporation and sublimation of the non-metallic atoms of the target. Office Action at 11 (citing Case at col. 9, lines 38-41). Neither silver nor selenium are non-metals. Further, evaporation and sublimation are not concerns in the deposition of silver selenide. Therefore, one skilled in the art would not be motivated to modify Ovshinsky based on the teachings of Case.

For at least these reasons, withdrawal of this rejection is respectfully requested.

Claims 2-7, 9 and 12 depend from claim 1 and are allowable over the combination of Ovshinsky and Case along with claim 1 for at least the reasons provided above as well as on their own merits. Accordingly, Applicants respectfully request the rejection be withdrawn and the claims allowed.

Independent claims 13, 17, 25, 28, 31, 34, 43, 45, 50, 60, 77 and 81 recite similar limitations to the above-described limitation of claim 1. All of these claims stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ovshinsky in view of Case and, in some instances, in further view of various other references. None of the references cure the above identified deficiencies of Ovshinsky and Case. Independent claims 13, 17, 25, 28, 31, 34, 43, 45, 50, 60, 77 and 81, and the claims depending therefrom, are therefore allowable over Ovshinsky and Case, even if combined with the other cited references. Accordingly, Applicants respectfully request the rejection be withdrawn and the claims allowed.

Claims 1-84 stand rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-56 of U.S. Patent No. 7,364,644. Since the claims of this application are subject to change, Applicants respectfully request that the double patenting rejection be held in abeyance until the rejections based on the prior art have been overcome.

In view of the above, Applicants believe the pending application is in condition for allowance.

Dated: September 3, 2009

Respectfully submitted,

By



Thomas J. D'Amico

Registration No.: 28,371

Elizabeth Parsons

Registration No.: 52,499

DICKSTEIN SHAPIRO LLP

1825 Eye Street, NW

Washington, DC 20006-5403

(202) 420-2200

Attorneys for Applicant